

APPLICANTS' ELECTION

Applicants hereby elect the specie, flufenazine, for prosecution at this time.

Thus, applicants elect the following elements:

A represents a straight chain of 3 carbon atoms;

R1 represents perfluoroalkyl of 1 carbon atom;

R2-R5 each represent hydrogen; and

R6 represents $\text{CH}_2\text{CH}_2\text{OR}_7$ where R7 represents hydrogen.

Applicants make their election with traverse.

REMARKS

Claims 13-18 are now pending in the subject U.S. patent application. Claims 13 - 18 as filed have been subjected to a Restriction/Election Requirement.

In response to the Restriction/Election Requirement, applicants have elected the specie, flufenazine, and the elements listed above, for prosecution at this time.

Applicants election is made with traverse. The Patent Office appears to use the PCT approach to a lack of unity of invention. Thus it is asserted that each compound of formula (I) is a separate species and the species lack the same or corresponding special technical features in view of U.S. Patent No. 3,194,733.

The cited reference contains no teaching or suggestion of neuroprotective and/or neurotrophic effects on the central nervous system or the peripheral nervous system as set forth at page 1, lines 6 to 11 of the present specification. Furthermore, the present claims are drawn to a method of treatment of amyotrophic lateral sclerosis (ALS) and

this is not envisaged in the reference cited. To the contrary, column 2, lines 7 to 10 of the cited reference states that the compounds are therapeutically active substances which are able to be used as tranquilizing (or ataractic) agents. The reference further states that when injected subcutaneously the compounds show activity of “a long acting tranquilizing drug” – column 2, lines 13-14. The claims therein are drawn to “[a] method of treating patients for mental disorders which comprises parentally administering once every two to three weeks of said patients a compound of the invention.” There is nothing which suggests neuroprotective or neurotrophic effects generally, or use of the compounds in the treatment of ALS specifically.

Further, the Patent Office described the structural formula recited as the “alleged special technical feature of the presently claimed invention.” In fact the compounds are acknowledged to be known in the present specification, for example on page 6, last paragraph. Thus, it is respectfully submitted that it cannot be that the applicant “alleges” that a special feature of the claimed invention is the structure of the compounds or combination of substituents in the compounds. Rather, as noted hereinabove, the statement is made more than once that the presently disclosed compounds surprisingly exhibit neuroprotective and/or neurotrophic effects, most clearly so at the passage starting at page 1, line 30, of the present U.S. patent application.

Therefore, it is respectfully submitted that the special technical feature identified should have been the activity of the compounds, and that activity is not taught or suggested in U.S. 3,194,733. As such, it is believed that there is nothing in the cited reference that destroys the technical relationship between species. Applicants

Application Serial No.: 10/551,395

respectfully request that the Patent Office reconsider and withdraw the restriction requirement.

Applicants hereby reserve the right to file one or more divisional patent applications directed to the unelected subject matter.

CONCLUSIONS

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

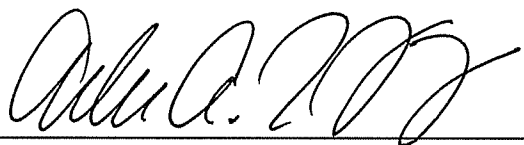
DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account Number **50-0426**.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: 05/08/2009

By: 

Arles A. Taylor, Jr.
Registration No. 39,395
Customer No. 25297
(919)493-8000

1386/22

AAT/MCG/cam/dbp